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Office of the United Nations High Commissioner for Human Rights

Summary

The present report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) is prepared in the context of the in-depth dialogue between the Office and the members of the United Nations Permanent Forum on Indigenous Issues. The Office draws attention to reports provided by it to the Forum at its previous sessions. It also invites members of the Forum to take note of the two recent reports submitted to the Human Rights Council related to indigenous peoples and aimed at contributing to the realization of the provisions of the United Nations Declaration on the Rights of Indigenous Peoples (A/HRC/9/11 and A/HRC/10/51). The report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people is contained in document A/HRC/9/9 and the report of the Expert Mechanism on the Rights of Indigenous Peoples on its first session can be found in document A/HRC/10/56. The present report identifies areas that OHCHR considers could be the subject of exchanges between the Office and the Permanent Forum, including a discussion on (a) the nature and form of advice that the Forum can give to OHCHR; (b) the nature of the information provided annually by OHCHR to the Forum; (c) the possible cooperation of members of the Forum with OHCHR in its activities at the country level; (d) the ways for improving dialogue between OHCHR and observers to the Forum, especially States and indigenous peoples' organizations; and (e) the appropriate ways of handling human rights complaints that may arise at sessions of the Forum.

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I. Introduction

1. The present report provides information as requested by the Permanent Forum on Indigenous Issues and suggestions on areas for discussion as part of the in-depth dialogue that the Office of the United Nations High Commissioner for Human Rights (OHCHR) offered to engage in with the members of the Forum. The report should be read alongside other reports relating to indigenous peoples submitted to the Human Rights Council, in particular the two recent reports of the High Commissioner on the rights of indigenous peoples[1] and the reports of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people[2] and the report of the Expert Mechanism on the Rights of Indigenous Peoples on its first session.[3] The Office also draws attention to the report of the Office of the High Commissioner for Human Rights on the relationship between climate change and human rights,[4] which contains information relevant to the debate on climate change which took place at the seventh session of the Forum. The Office welcomes the opportunity to hold an in-depth dialogue with the Forum with the objective of enhancing the exchange of information and advice provided by members to the United Nations system, which is at the core of its mandate.

II. Recommendations addressed directly to the Office of the United Nations High Commissioner for Human Rights

2. In its report on its seventh session, the Forum recommended that OHCHR promote the elaboration of a report on the impact of climate change and indigenous peoples by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people.[5] The Special Rapporteur indicated that in the light of the creation of the Expert Mechanism on the Rights of Indigenous Peoples, whose mandate is primarily research-based and study-oriented, he would not engage on a regular basis in thematic studies on his own, but rather provide input into the thematic work on issues of general concern to indigenous peoples and give priority to the examination of specific situations in which indigenous peoples' human rights are threatened and being violated. On 28 March 2008, the Human Rights Council adopted resolution 7/23 on human rights and climate change, by which it expressed concern that climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights and mandated OHCHR to conduct an analytical study of the relationship between climate change and human rights. At its seventh session, members of the Forum as well as observers were informed of the study and invited to make written contributions to it. The consultation process organized by the Office in the preparation of the study offered the opportunity for indigenous organizations to submit contributions to the Office, which hosted an open-ended consultation on the relationship between climate change and human rights on 22 October 2008 in Geneva. Andrea Carmen, Executive Director of the International Indian Treaty Council, was invited as a panellist to discuss the impact of climate change on the

[1] A/HRC/9/11 and A/HRC/10/51.
[2] A/HRC/9/9.
[3] A/HRC/10/56.
[4] A/HRC/10/61.
[5] E/2008/43, chap. I, para. 29.

human rights of indigenous peoples. The report of the Office on the relationship between climate change and human rights[6] discusses specific rights which relate directly to climate change-related threats, in particular the rights to life, food, water, health and housing. It stresses that important aspects of the right to self-determination include the right of a people not to be deprived of its own means of subsistence and underlines the specific situation of indigenous peoples. The report will be considered by the Human Rights Council at its tenth session, to be held in March 2009.

3. The Forum also recommended that OHCHR and relevant United Nations agencies and organs establish specific units for indigenous peoples' issues to contribute to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples in accordance with articles 41 and 42 of the Declaration.[7] A dedicated unit was established within the Office following General Assembly resolutions 49/214 and 50/157 to support the activities related to indigenous peoples. At present, indigenous peoples' issues are dealt with in the Indigenous Peoples and Minorities Unit, which covers issues related to indigenous peoples, minorities and victims of contemporary forms of slavery. Furthermore, the Office has, within its Special Procedures Division, the Groups in Focus Section, which supports, inter alia, the mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people.

4. The Forum recommended that OHCHR, the United Nations Institute for Training and Research and other relevant United Nations agencies and offices provide necessary information and training on the universal periodic review process for and with indigenous peoples.[8] The Office participated, in September 2008, in a training session organized by the Indigenous Peoples' Centre for Documentation, Research and Information, during the Indigenous Peoples' Global Caucus which preceded the first session of the Expert Mechanism on the Rights of Indigenous Peoples, to inform participants about the mandate of the Office regarding the universal periodic review process and the place and role of the review mechanism vis-à-vis existing international human rights mechanisms. At the invitation of the African Centre for Democracy and Human Rights Studies, and with a specific focus on how non-governmental organizations can contribute to the review process, the Office gave a similar briefing session to African non-governmental organizations, including indigenous peoples' organizations and national human rights institutions, which gathered for three days at the NGO Forum prior to the forty-fourth ordinary session of the African Commission on Human and Peoples' Rights, held in November 2008. The Office also introduced a training module on the universal periodic review for the indigenous representatives participating in the OHCHR fellowship programmes. Full information on the review can be found on the OHCHR website.

5. In its report on its sixth session, the Forum recommended that OHCHR conduct in 2007, in consultation with indigenous peoples' organizations, non-governmental organizations, experts, States and multilateral and bilateral agencies, the formulation of guidelines directed to all actors, both governmental and non-governmental, dealing with the respect and protection of the rights of

[6] A/HRC/10/61.

[7] E/2008/43, chap. I, para. 150.

[8] Ibid., para. 153.

indigenous peoples in voluntary isolation and initial contact.[9] The Forum was informed at its previous sessions about the series of seminars that the Office had organized on the issue in Santa Cruz de la Sierra, Bolivia, in November 2006 and in Quito in October 2007. A further workshop was organized in November 2008 by the International Work Group for Indigenous Affairs (IWGIA) and the International Indigenous Committee for the Protection of Peoples in Isolation and in Initial Contact of the Amazon, the Gran Chaco and Paraguay's Oriental Region (CIPIACI), with the participation of the Office and indigenous peoples' representatives to discuss ways and means to finalize the guidelines. The Spanish Agency for International Development Cooperation is continuing to provide financial assistance to develop a programme of action for 2009-2010 which will be implemented by the Office together with IWGIA and the Instituto Promoción Estudios Sociales (IPES-ELKARTEA). The programme has two phases: the finalization of the draft guidelines, and implementation of the guidelines through the development of a special protection framework, as called for in the report of the Secretary-General on the draft programme of action for the Second International Decade of the World's Indigenous People,[10] to ensure that the human rights of indigenous peoples in voluntary isolation and initial contact are effectively protected. A workshop will be held in March 2009 in Geneva to discuss and finalize the guidelines in cooperation with all relevant actors, in particular indigenous peoples' representatives and the concerned Governments of the region. The Forum will also be invited to contribute. A copy of the guidelines will be made available to the Forum and a related side event will be organized at the margin of the eighth session of the Forum.

6. At its second session, the Forum recommended that the United Nations system, particularly OHCHR and the United Nations Environment Programme (UNEP), taking note of the World Bank's extractive industries review, organize a workshop on resource extraction and indigenous peoples to further discuss such issues as corporate accountability and the rehabilitation of mined out areas, polluted water bodies and compensation of adversely affected communities, sustainable development and land rights, with a view to developing a mechanism to address the issues.[11] The Workshop on Indigenous Peoples, Private Sector Natural Resource, Energy and Mining Companies and Human Rights, organized by the Office in December 2001 with the participation of a number of representatives of extractive industries, indigenous peoples and the United Nations system, including the United Nations Conference on Trade and Development (UNCTAD), the United Nations Development Programme (UNDP), the International Labour Organization (ILO) and the World Bank, called for a second workshop to elaborate a draft framework for dialogue and implementation on consultation, benefit-sharing and dispute resolution in private sector projects affecting indigenous peoples.[12] Noting also the recommendation of the International Workshop on Perspectives of Relationships between Indigenous Peoples and Industrial Companies, organized by the Forum in July 2007, that a second workshop be held to elaborate a draft framework for dialogue and implementation on consultation, benefit-sharing and dispute resolution in private sector projects affecting indigenous peoples, the Office organized the International Workshop on Natural Resource Companies, Indigenous Peoples and

[9] E/2007/43, chap. I, para. 40.

[10] A/60/270, para. 51.

[11] E/2003/43, chap. I, para. 51.

[12] E/CN.4/Sub.2/AC.4/2002/3, Recommendations, para. 7 (b).

Human Rights: Setting a Framework for Consultation, Benefit-sharing and Dispute Resolution. The Workshop, held in Moscow in December 2008, reviewed case studies from Canada, New Caledonia, Indonesia, South Africa and the Russian Federation. The papers can be found on the website of the Office. The Workshop also benefited from experiences of other countries provided by participants from the private sector, the United Nations system, experts and indigenous peoples. The Permanent Forum was represented by Pavel Sulyandziga. The final report will be presented to the Expert Mechanism at its second session and an advance copy of the draft guidelines will be made available to members of the Forum for their comments. The papers and other information related to the Workshop can be found on the website of the Office.

III. Promotion of the United Nations Declaration on the Rights of Indigenous Peoples

7. Articles 41 and 42 of the United Nations Declaration on the Rights of Indigenous Peoples give the responsibility to the organs of the United Nations system to contribute to the full realization of the provisions of the Declaration and follow up its effectiveness. As the United Nations focal point for human rights, OHCHR has a crucial role to play in building awareness of this new human rights instrument and responding effectively to the challenge of its implementation at the national level.

8. The OHCHR field presences have been active in promoting the Declaration, organizing or participating in events related to the celebration of the International Day of the World's Indigenous People, translating the Declaration into national or indigenous languages, and developing tools to promote greater awareness of the existing standards to advance the rights of indigenous peoples. For example, the Subregional Centre for Human Rights and Democracy in Central Africa, located in Yaoundé, organized jointly with the Ministry of Social Affairs of Cameroon, the United Nations Children's Fund (UNICEF) and the International Labour Organization (ILO), a media event to raise awareness about the human rights situation of indigenous communities in the region and promote the role of the Declaration in advancing their rights, with a specific focus on the right of free, prior and informed consent of indigenous peoples. With a view to promoting a better understanding of existing international standards related to indigenous peoples, the Regional Office for Latin America and the Caribbean has developed a comparative review of the Declaration and the Indigenous and Tribal Peoples Convention (No. 169) of ILO.

9. The Office also continues to ensure that indigenous peoples' issues are integrated in the work of the human rights mechanisms. Briefings on the Declaration were given at the Fifteenth Annual Meeting of Special Rapporteurs, Representatives, Independent Experts and Chairpersons of Working Groups of the Human Rights Council in June 2008 and to several of the treaty bodies, such as the Committee on the Elimination of Racial Discrimination and the Committee on Migrant Workers. Positive development should be noted regarding the rights of the child. At its fiftieth session, held in January 2009, the Committee on the Rights of the Child adopted General Comment No. 11 on indigenous children and their rights under the Convention, recalling the obligation of State parties under articles 2 and

30 of the Convention to promote and protect the human rights of all indigenous children, including specific references to the rights set forth in the United Nations Declaration on the Rights of Indigenous Peoples.

10. A communication strategy for promotion of the Declaration has also been developed within the Office, including products such as a pocket-sized version of the Declaration and a poster in all United Nations languages. A brochure of frequently asked questions for the general reader on the main provisions of the Declaration is also in preparation. In line with the Durban Declaration and Programme of Action resulting from the World Conference against Racism, held in 2001, which acknowledged the challenges faced by indigenous peoples, including racism and racial discrimination, and called upon States to adopt the Declaration on the Rights of Indigenous Peoples, the Office will organize a side event in the margin of the Durban Review Conference to be held in Geneva in April 2009 in order to discuss how the Declaration is used to address various forms of racism that indigenous peoples are facing today.

11. The Indigenous Fellowship Programme also makes an important contribution to building up community capacity to defend human rights and is a concrete means for promoting understanding of the provisions of the United Nations Declaration on the Rights of Indigenous Peoples.

IV. Mainstreaming of indigenous issues in country programmes and activities

12. In its efforts to integrate the rights of indigenous peoples into the country programmes of its field presences, the Office continues to provide training to its own staff working in the field. It organized the first pilot training workshop in Nepal in May 2007 for staff responsible for country engagement in Nepal, Afghanistan and Cambodia. The second workshop, which was held in Addis Ababa in November 2008, included staff from OHCHR country offices in Togo and Uganda, as well as other field presences, including human rights components of peacekeeping operations and human rights advisers from the Central African Republic, Côte d'Ivoire, Guinea, Liberia, Rwanda, Sierra Leone, Kenya, Cameroon, Senegal, the Democratic Republic of the Congo, Chad, and also staff from the Regional Office for Eastern Africa in Addis Ababa. The training provided information on international standards, mechanisms and national developments relating to indigenous peoples. It also identified the main concerns and aspirations of indigenous peoples of the region and of the challenges in implementing change on the ground, and increased understanding of how to advance the rights of these groups through programme planning, implementation and evaluation, drawing on the experiences of the participants. The participants also discussed partnership opportunities with the United Nations system and civil society organizations.

13. In the same vein, and promoting a "one United Nations system approach" to addressing indigenous peoples' issues, the OHCHR Regional Office for South-East Asia, in cooperation with the UNDP Regional Centre in Bangkok's Regional Initiative on Indigenous Peoples' Rights and Development (RIPP), held the first interactive regional dialogue on the United Nations Declaration on the Rights of Indigenous Peoples, the mechanisms on the promotion and protection of the rights of indigenous peoples and their relevance for United Nations work in South-East

Asia in Bangkok on 28 and 29 January 2009. United Nations experts participating in the dialogue included Vicky Tauli Corpuz, Chairperson of the Permanent Forum on Indigenous Issues, Rodolfo Stavenhagen, former Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Virginia Dandan, member of the Committee on Economic, Social and Cultural Rights, and John Bernhard Henriksen, Chairperson-Rapporteur of the Expert Mechanism on the Rights of Indigenous Peoples. Participants in the two-day dialogue included the United Nations resident coordinators/UNDP resident representatives and other United Nations representatives from Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, the Philippines, Thailand and specialized agencies with regional presence in Bangkok. The aim of the dialogue was to contextualize the content of article 42 of the United Nations Declaration on the Rights of Indigenous Peoples which calls on the United Nations system, including at the country level, to promote respect for and full application of the provisions of the Declaration and follow up its effectiveness.

14. OHCHR field presences are also organizing inter-agency meetings to promote knowledge and understanding of the Declaration in order to ensure that internal policies properly reflect standards on indigenous peoples' rights and improve integration of indigenous peoples' rights into operational programming. National human rights institutions are also key partners because they operate at the domestic level and can articulate indigenous issues within national priorities. In Latin America, the Regional Office for Latin America and the Caribbean co-organized, together with UNDP, UNICEF, the United Nations Population Fund (UNFPA), ILO, the World Food Programme (WFP) and the Pan American Health Organization, a regional seminar on the United Nations Declaration on the Rights of Indigenous Peoples from 6 to 8 October 2008 in Lima, Peru. National human rights institutions and indigenous representatives from all countries of South America were invited to discuss ways of implementing the international and national legal instruments related to indigenous peoples at the national and regional levels. In Liberia, the human rights adviser of the Human Rights and Protection Section in the United Nations Mission in Liberia (UNMIL) has been working since 2007 on good practices and lessons learned to advance the rights of indigenous peoples working for large multinational rubber plantations. A task force comprised of the Government and UNMIL was established to develop strategies aimed at improving the human rights situation of the indigenous peoples living in and working for rubber plantations.

15. As regards national implementation of the rights of indigenous peoples, the Office has been following up on recommendations of human rights mechanisms related to the situation of indigenous peoples in the Latin American region. A study on good practices, obstacles and challenges in the implementation of recommendations of the Special Rapporteur on indigenous peoples, the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women in Bolivia, Ecuador and Peru was commissioned and co-financed by the Office, UNICEF and the United Nations Development Fund for Women (UNIFEM). The purpose of the study is to understand better the cause of the so-called implementation gap between laws and governmental commitments and their practical application on the ground. The study, prepared by an indigenous consulting team, was completed in July 2008 and published in November 2008.

16. The Office also gives priority to requests for technical cooperation from Governments. For example, the country office in Colombia provided thematic advice and facilitated a dialogue process between the department dealing with ethnic issues, placed under the Ministry of Interior and Justice, and the U'wa indigenous peoples. A series of meetings were organized in 2008 in different parts of the country bringing together indigenous leaders, organizations and key national institutions, including the Ombudsman Office and Procurador General de la Nación, to agree upon a document clarifying the procedure of consultation to be undertaken prior to any exploration and exploitation of mineral and other natural resources on the lands of the U'wa indigenous peoples. This resulted in a clearer understanding of the issue and the preparation of a guiding document which serves as a reference tool within the newly established unit on indigenous peoples under the Ministry of Interior and Justice to ensure full and effective consultation of the U'wa indigenous peoples prior to any activities on their lands.

17. The Office continues to provide thematic expertise and technical assistance regarding the development or strengthening of national legislation on the rights of indigenous peoples. In Ecuador, the Office is working on a draft law on indigenous justice in coordination with the Ministry of Justice. It is also developing human rights training modules on indigenous peoples for the judiciary, among others. The Office continues to give technical support to the Republic of the Congo for its legislative effort on the rights of indigenous peoples. Following a series of meetings to help the drafters align the document with existing human rights standards, in particular the United Nations Declaration on the Rights of Indigenous Peoples, the Office organized in August 2008, together with UNICEF in Brazzaville and the Ministry of Justice of the Republic of the Congo, a two-day briefing session for parliamentarians to promote a better understanding of the rights of indigenous peoples and facilitate the passage of the law through Parliament.

18. In its efforts to engage Governments in a dialogue with indigenous peoples in the framework of the United Nations Declaration on the Rights of Indigenous Peoples, the Subregional Centre for Human Rights and Democracy in Central Africa, located in Yaoundé, will organize in April 2009 a regional workshop, inviting both Governments and indigenous peoples from eight Central African countries to discuss the main issues faced by the indigenous peoples in the region and how to advance their human rights.

19. Capacity-building and awareness-raising workshops organized by field presences are also on the increase. The Office in Nepal launched a three-month social inclusion project in 2006 to map out the issues of indigenous peoples and minorities in Nepal. Based on the report of the project, the Office carried out a number of activities to build their capacity and developed a cartoon series as a tool for raising awareness on the right of indigenous peoples and minorities to access the justice system. The question of the indigenous legal system vis-à-vis the formal justice system was also addressed by the Office in Guatemala, which published a study in May 2008 on the access to justice, including a comparative analysis of the two systems. The study is intended for indigenous and formal justice practitioners.

V. Proposals for contribution to in-depth dialogue

20. The Office welcomes the opportunity to hold an in-depth dialogue with the Forum and proposes the following areas as a starting point for the discussions:

Nature and scope of advice provided by the Forum. The core mandate of the Forum is to provide advice on indigenous issues to the United Nations system through the Economic and Social Council. At present, advice to OHCHR comes mainly in the form of recommendations addressed either to the secretariat or to human rights bodies or mechanisms. The value of these recommendations is that they provide an understanding of where the Forum considers priorities in relationship to human rights should lie. However, there is opportunity for more substantive inputs into the work being undertaken by the Office and the mechanisms in particular. For example, OHCHR was able to draw upon the discussions on climate change held at the Forum at its seventh session in the preparation of the High Commissioner's report on climate change and human rights for the tenth session of the Human Rights Council, to be held in March 2009, and members of the Forum could also have contributed directly to the study. Similarly, the Committee on the Rights of the Child, in preparing its general comment on indigenous children, might have benefited from the contributions of Forum members. The Office considers that a further discussion would be helpful to reflect on ways in which the Forum can contribute to these kinds of outputs of the human rights bodies and mechanisms.

Nature and form of information provided. At present OHCHR, like other United Nations agencies, provides annual reports on how it has taken up specific proposals of the Forum. It also provides general information on the activities it has undertaken on indigenous issues. However, the Office would like to have a sense of whether the information provided is of use to members and, in particular, whether the information contributes to the realization of the mandate of the Forum. It may be noted that the reports generate very few questions from members and almost no dialogue with observers, including States and indigenous peoples. Is there a need to reformulate the reports in some way so as to stimulate a more dynamic exchange of views?

Dialogue with observers. The Forum attracts a large number of observers, including representatives of States, indigenous organizations and experts. The annual sessions of the Forum, therefore, offer a unique opportunity to hold a broad discussion on the work of United Nations agencies with stakeholders, in particular Governments and indigenous community leaders who attend the sessions and want to see action at the local level. In some cases United Nations agencies, including OHCHR, have in their delegations staff from the field. How can the Forum enhance and make use of the presence of these first-hand experiences and draw lessons for its work at the international level?

Avoiding duplication of efforts. One of the challenges facing the United Nations system as a whole, including the Forum, is how to ensure the coherence and cooperation of its programmes. The Inter-Agency Support Group on Indigenous Issues was created to provide a space in which United Nations agencies working on indigenous issues could cooperate and keep themselves informed of each other's work. The Forum is invited to the annual meetings and contributes actively. Notwithstanding these initiatives and given the need to maximize the effective use of the limited resources available to support indigenous issues, OHCHR considers

that further exchange of views is needed to enhance cooperation and avoid duplication. The establishment of the Expert Mechanism on the Rights of Indigenous Peoples, which held its first session in October 2008, and in which the Forum was represented, gives renewed importance to the question of cooperation.

Cooperation at the country level. OHCHR has greatly increased its field presences in recent years and has capacity in more than 50 countries. This means that there is some potential for individual members of the Forum to play a role in OHCHR country activities. This has already taken place in several countries such as the Russian Federation and Guatemala. OHCHR has an interest in hearing the views of the Forum members on how it might draw on their substantive contributions to our work in the field.

Human rights violations. OHCHR is aware of the numerous human rights complaints brought to the attention of the Forum each year and also of the role of the Forum as an advisory body to the Economic and Social Council without any formal mandate to act upon violations. Efforts to date have consisted in ensuring the presence of the Special Rapporteur on indigenous people at sessions of the Forum so that he can hear first-hand these submissions and act on them if he considers it appropriate. The Office, at the request of the Forum, has also facilitated the participation of other special procedure mandate holders so that observers are made aware of the range of mechanisms available in cases of human rights violations. Clearly this is an issue of fundamental importance to many participants and the Office believes that further discussion on how these can be addressed in a systematic way is necessary.